

Legal consequences of damage caused to the controlled affiliate by corporate group management

Abstract

This thesis deals with legal consequences of damage caused to the controlled affiliate as a result of the corporate group management in Czech law. The introduction sets out the general legal and theoretical framework of the thesis, namely the basic theoretical concepts of the corporate law, the principles of separate legal personality and limited liability, and the structure of the law on the corporate groups. It is divided into two main chapters. The first chapter analyzes the consequences of damage caused to the controlled affiliate in the economically functional corporate groups. It firstly analyzes the aspects of group management, different forms of damage and principles of group damage compensation according to sec. 71 et seq. of the Act no. 90/2012 coll., on Commercial Companies and Cooperatives. It further provides an explanation of the provisions on the protection of creditors and minority shareholders of the controlled affiliate, namely the liability of the parent company towards the creditors of the affiliate for the payment of debts, liability of the parent company to compensate any damage arising to the members of the affiliate in connection with its influence and the right of the minority shareholders to have their share bought back by the parent company at a fair price. The final provisions of the first chapter deal with the procedural aspects of the law on the corporate groups. The second chapter analyzes the consequences of crisis and bankruptcy on the corporate group management. It opens with some doctrinal issues regarding the economical crisis, insolvency law principles and principles of the group insolvency. It further provides some comments regarding the obligations and liabilities of directors and shadow directors in the vicinity of bankruptcy. Finally, it analyzes the provisions of the Czech Insolvency Act that deal specifically with group insolvency and considers, whether the *common law* instrument of substantive consolidation is suitable for incorporation into Czech law.